

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RONALD BUZZARD, JR.,

Petitioner,

v.

JEFFREY UTTECHT,

Respondent.

CASE NO. 2:21-cv-01061-JCC-JRC

ORDER DENYING MOTION TO  
AMEND

Petitioner filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. Dkt. 6. Before the Court is petitioner's motion to amend the petition. Dkt. 15. As discussed below, the Court denies without prejudice this motion.

The Federal Rules of Civil Procedure apply to § 2254 proceedings "to the extent they are not inconsistent with any statutory provisions" or the Rules Governing § 2254 Cases ("§ 2254 Rules"). Rule 12, § 2254 Rules. Generally, Federal Rule of Civil Procedure 15(a) gives a plaintiff "the right to amend once as a matter of course" until 21 days after the defendant files a responsive pleading. *See* Fed. R. Civ. P. 15(a) advisory committee note to 2009 amendment; *Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). A § 2254 petition must

1 “substantially follow” this Court’s form for § 2254 actions. Rule 2(d), § 2254 Rules. The form  
2 elicits specific information with respect to, among other things, exhaustion of state court  
3 remedies.

4 “Before a federal court may grant habeas relief to a [petitioner], the [petitioner] must  
5 exhaust his remedies in state court,” which means that “the [petitioner] must give the state courts  
6 an opportunity to act on his claims before he presents those claims to a federal court in a habeas  
7 petition.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999). Usually, a petitioner’s federal  
8 habeas petition should be dismissed if the petitioner “has not exhausted available state remedies  
9 as to any of his federal claims.” *Coleman v. Thompson*, 501 U.S. 722, 731 (1991) (citations  
10 omitted). And, if a petition contains exhausted and unexhausted claims, courts must, except in  
11 limited circumstances, “delete the unexhausted claims” from the petition. *See Rhines v. Weber*,  
12 544 U.S. 269, 277–78 (2005).

13 Here, petitioner did not need this Court’s permission to file an amended petition.  
14 Generally, he has a right to do so until 21 days after respondent answers. However, petitioner did  
15 not file his proposed amended petition on this District’s form. Although (excluding its title page,  
16 signature page, and table of contents) the petition is 39-pages long, it does not substantially  
17 follow the form, partly because it does not provide the information about exhaustion of state  
18 court remedies that the form elicits. Therefore, the proposed amended petition is deficient.

19 Accordingly, the Court **ORDERS** as follows:

20 1. The Court **DENIES WITHOUT PREJUDICE** petitioner’s motion to amend  
21 (Dkt. 15) and **STRIKES** the proposed amended petition (Dkt. 16).

22 2. On or before **October 20, 2021**, petitioner may, if he wishes, file an amended  
23 petition that cures the deficiencies identified in this order.

1           3.       The amended petition, if filed, must be filed on this District's § 2254 form,  
2 legibly written or retyped in its entirety, and filled out completely. Furthermore, the amended  
3 petition must contain case number 2:21-cv-01061-JCC-JRC.

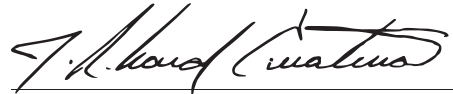
4           4.       The amended petition, if filed, will act as a complete substitute for the petition;  
5 the Court will address only the claims alleged in it.

6           5.       The amended petition, if filed, must not incorporate by reference any part of the  
7 petition. Likewise, the amended petition must not incorporate arguments or text from any other  
8 documents, including any exhibits. However, petition may, if he wishes, submit any exhibit  
9 necessary to support the amended petition's allegations.

10          6.       If petitioner files an amended petition, and if he requires additional space to  
11 articulate his claims, he may submit no more than **ten (10)** continuation sheets. Any continuation  
12 sheet, whether handwritten or typewritten, must comply with this District's Local Rules  
13 governing form of filings, including rules governing text size, margin size, and line spacing. *See*  
14 Local Rule 10(d)–(e).

15           The Clerk is directed to **SEND** petitioner the appropriate forms for filing a § 2254 action  
16 and a copy of this order.

17           Dated this 20th day of September, 2021.

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20 J. Richard Creatura  
21 Chief United States Magistrate Judge  
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